FILED
AUG 30 1991
OFFICE OF THE CLERK

No. 90-1878

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

UNITED VAN LINES, INC.,
Petitioner,

vs.

WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, JEANETTE P. SHULDA, JOHN SHULDA, CITIZENS MOVING & STORAGE, ROYAL INSURANCE COMPANY, and CALIFORNIA UNINSURED EMPLOYERS FUND,
Respondents.

On Petition for a Writ of Certiorari
to the Court of Appeal of California,
Fourth Appellate District, Division Two

REPLY TO BRIEFS IN OPPOSITION

MICHAEL G. BIGGERS
(Counsel of Record)
JOHN W. AMBERG
ROBERT A. PALLEMON
BRYAN, CAVE, MCPHEETERS & MCROBERTS
245 Park Avenue
New York, New York 10167
(212) 692-1800

Counsel for Petitioner

St. Louis Law Printing, Inc. 13307 Manchester Rd. St. Louis, MO 63131 314-231-4477

TABLE OF CONTENTS

Page(s)

INTRODUCTION 1

ARGUMENT

THE COURT HAS JURISDICTION IN THIS CASE BECAUSE THERE ARE NO INDEPENDENT AND ADEQUATE STATE GROUNDS TO BAR REIVEW OF THE CALIFORNIA COURT'S DECISION 3

CONCLUSION 6

TABLE OF AUTHORITIES

Page(s)

Cases:

Enterprise Irrigation District v. Farmers Mutual Canal Co., 243 U.S. 157 (1917) 5

Michigan v. Long, 463 U.S. 1032 (1983) 2,3

Minnesota v. National Tea Co., 309 U.S. 551 (1940) ... 6

Oregon v. Kennedy, 456 U.S. 667 (1982) 5

Zacchini v. Scripps Howard Broadcasting Co., 433 U.S. 562 (1977) 5

Other Authorities:

28 U.S.C. § 1257 3

California Business and Professions Code § 7026 5

California Labor Code § 2750.5 4,5

Hanna, *California Law of Employee Injuries and Workmen's Compensation* § 4.02[4][d] (2d ed. 1990) 5

No. 90-1878

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

UNITED VAN LINES, INC.,

Petitioner,

VS.

WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, JEANETTE P. SHULDA, JOHN SHULDA, CITIZENS MOVING & STORAGE, ROYAL INSURANCE COMPANY, and CALIFORNIA UNINSURED EMPLOYERS FUND,

Respondents.

On Petition for a Writ of Certiorari
to the Court of Appeal of California,
Fourth Appellate District, Division Two

REPLY TO BRIEFS IN OPPOSITION

INTRODUCTION

In their separate briefs in opposition, Respondents Royal Insurance Company and Citizens Moving and Storage and Respondent Jeanette P. Shulda ("Respondents") do not dispute that the petition for a writ of certiorari filed by United Van Lines, Inc. ("United") presents substantial federal questions for this

Court's review.[1] Nor do they challenge the basic premise that compliance with federal regulations cannot be used as evidence of an employment relationship without running afoul of the Commerce Clause. Rather, Respondents seek to avoid review of the California court's decision by erroneously contending that there are independent and adequate state grounds to support that decision.

A fair reading of the record, however, conclusively shows that the federal questions presented by United's petition — the proper construction and application of Department of Transportation and Interstate Commerce Commission regulations, and whether the California court's construction of these federal provisions to create an employment relationship between United and John Shulda impermissibly discriminates against interstate carriers in violation of the Commerce Clause — were so inextricably interwoven with the decision below as to be essential to the judgment in this case. The record contains no indication whatsoever, much less a plain statement, that the decision below was "alternatively based on bona fide, separate, adequate, and independent [state] grounds." *Michigan v. Long*, 463 U.S. 1032, 1041 (1983). Accordingly, there is no jurisdictional bar to this Court's review, and an opinion by the Court would not be advisory.

---

[1] Respondent California Uninsured Employers Fund did not file a brief in opposition.

ARGUMENT

THE COURT HAS JURISDICTION IN THIS CASE BECAUSE THERE ARE NO INDEPENDENT AND ADEQUATE STATE GROUNDS TO BAR REVIEW OF THE CALIFORNIA COURT'S DECISION.

Ordinarily this Court examines the opinion of the state court to determine whether there is an independent and adequate state ground to foreclose the exercise of this Court's jurisdiction to review a state court judgment under 28 U.S.C. § 1257. *See, e.g., Michigan v. Long*, 463 U.S. at 1043-44. In this case there is no written opinion of the California Court of Appeal, and the California Supreme Court denied review of the Court of Appeal's decision without comment. Accordingly, this Court must examine the record below to determine whether there is an independent and adequate state ground to support the decision.

The examination of the record should be guided by the approach formulated in *Michigan v. Long*. There, this Court established the following framework for the exercise of its certiorari jurisdiction: "[W]hen . . . a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, . . . we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." *Michigan v. Long*, 463 U.S. at 1040-41.

Here, no laborious examination of the record or California law is needed to conclude that the judgment was inevitably grounded in the federal questions presented by United and that there are no "bona fide, separate, adequate, and independent" nonfederal grounds to support the judgment. The California court plainly held that United's compliance with legal duties imposed by federal regulations constituted important evidence of John Shulda's status as an employee, and the state court's decision rested in large part on the evidence of United's compliance.

The Workers' Compensation Judge, who acted as the trial court in the workers' compensation proceeding, specifically found that: "It is recognized that there are many requirements that originate with the Department of Transportation (DOT) and therefore are not unique to United .... The fact that the Interstate Commerce Commission and/or the Department of Transportation impose rules on the interstate trucking industry does not relieve the van lines from the consequences [i.e., the creation of an employment relationship because of United's compliance therewith] of these rules." App. E, pp. A-31 to A-34.[2]

The federal questions presented by this case were also interwoven in the Workers' Compensation Appeals Board's reasoning and constituted a nonsegregable basis for its decision that an employment relationship existed between United and John Shulda. *See* App. B, pp. A-12 to A-13, adopted and incorporated by reference at App. B, p. A-4.

In stark contrast, nowhere in the record is there any bona fide, separate, adequate and independent nonfederal ground to support the California court's decision. Respondent Jeanette Shulda's assertion that California Labor Code Section 2750.5 (erroneously cited as Section 2705.5) provides an independent and adequate state ground is wholly untenable as a matter of California law. Labor Code Section 2750.5 creates a rebuttable presumption that a worker performing services for which a license is required under Chapter 9 of Division 3 of the Business and Professions Code, but who fails to obtain such a license, is an employee rather than an independent contractor. By its express terms, however, Chapter 9 of the Business and Professions Code is limited to services provided by "builders" — defined as workers who construct, alter, repair, move, wreck or demolish

---

[2] All references are to the Appendix to United's petition for a writ of certiorari.

any building, highway, railroad, or structure — and does not apply to truck drivers such as John Shulda. *See* Bus. and Prof. Code § 7026. Since the undisputed evidence below showed that John Shulda was *not* a worker performing services for which a license is required under that Chapter, no presumption of employee status could be created by Section 2750.5. Hanna, *California Law of Employee Injuries and Workmen's Compensation,* § 4.02[4][d] (2d ed. 1990). Labor Code Section 2750.5 therefore cannot constitute an independent and adequate state ground to preclude review by this Court. *See Enterprise Irrigation District v. Farmers Mutual Canal Co.*, 243 U.S. 157, 164 (1917) (jurisdiction cannot be defeated by reliance on state ground "so certainly unfounded that it properly may be regarded as essentially arbitrary or a mere device to prevent a review of the decision upon the Federal question").

Similarly, the record belies Respondent Jeanette Shulda's contention that the California court's decision was alternatively grounded on a finding that the "economic reality" of the relationship between United and John Shulda created an employment relationship under California law. Nothing in the record indicates that the decision below was separately and independently based on some amorphous economic analysis of the relationship between United and John Shulda; the Workers' Compensation Judge specifically detailed "elements of control" which included United's compliance with federal regulations. App. B, pp. A-12 to A-13.

Moreover, even were there doubt that the federal and state grounds were interwoven, the extensive reliance on the federal grounds to reach the decision in this case justifies plenary review by this Court. *See Oregon v. Kennedy*, 456 U.S. 667, 671 (1982), *citing Zacchini v. Scripps Howard Broadcasting Co.*, 433 U.S. 562 (1977). While stressing the need for proper deference to state court judgments, the Court has emphasized that "it is equally important that ambiguous or obscure adjudications by

state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action." *Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael G. Biggers
(Counsel of Record)
John W. Amberg
Robert A. Pallemon
Bryan, Cave, McPheeters & McRoberts
245 Park Avenue
New York, New York 10167
(212) 692-1800

Counsel for Petitioner

August 1991